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In re Application of:	:	
CURAUDEAU, ALAIN H. et al.	:	DECISION
PCT Application No.: PCT/CA2005/000141	:	
US Application No.: 10/588,571	:	
Int. Filing Date: 04 February 2005	:	UNDER
Priority Date: 06 February 2004	:	
Atty Docket No.: 249692001600	:	
For: PHOTODYNAMIC THERAPY FOR THE	:	37 CFR § 1.47(a)
TREATMENT OF ACNE	:	

This is in response to applicants' "RENEWED PETITION UNDER 37 C.F.R. §1.47(a)" received on 09 September 2009.

BACKGROUND

On 04 February 2005, applicants filed international application PCT/CA2005/000141.

On 03 August 2006, applicant filed a submission for entry into the national stage in the United States, which was accompanied by, inter alia, a preliminary amendment to the claim. The papers were assigned U.S. application number 10/588,571.

On 29 October 2007, the DO/EO/US mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 14 January 2008, applicants submitted a declaration and a "PETITION TO FILE DECLARATION ON BEHALF OF THE NONSIGNING INVENTOR WHO REFUSES TO SIGN UNDER 37 C.F.R. §1.47(A)

On 05 September 2008, applicant filed a petition under 37 CFR 1.47(a) requesting acceptance of the application without an inventor's signature. The petition was dismissed for failure to meet partial requirements of 37 CFR 1.47(a).

On 09 September 2009, applicants submitted the present petition for reconsideration.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(g), (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, and (4) an oath or declaration by the other joint inventors on behalf of and as agent for the non-signing inventor.

With regard to item (1) above, the requisite petition fee has been charged to Deposit Account No. 03-1952.

With regard to item (2) above, MPEP 409.03(d) states in relevant part,

Where a refusal to sign the application papers is alleged, the circumstances of this refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Before a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney.

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

The petition states that Dr. Patrick M. Curry refused to sign the application paper. Applicants have provided a complete email reply from Dr. Curry refusing to sign without

compensation to a trust fund. Further emails from applicants' representative to Dr. Curry were also provided to request for the signature but with no success.

With regard to item (3) above, the petition stated the nonsigning inventor's last known address.

With regard to item (4) above, the oath or declaration executed by the applicants on behalf of and as agents for the nonsigning inventors has been submitted.

Based on the above, applicants have satisfied the requirements for a grantable petition under 37 CFR 1.47(a).

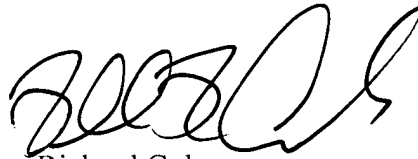
CONCLUSION

For the reasons above, the petition under 37 CFR 1.47(a) is GRANTED.

This application is being referred to the National Stage Processing (DO/EO/US) for further processing in accordance with this decision, the 35 USC 371(c)(1), (c)(2) and (c)(4) date is 05 September 05 2008.



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